IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2463 OF 2007.

Chandrakishore Alopiprasad
Chaudhary and another. ... Petitioners.
Versus.
Surendra Chaudhary and others. ... Respondents.

Shri S.H.Joshi for the Petitioners.

Shri Rajiv Patil for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 20th June, 2007.

P.C.:

1. Heard the learned Advocates appearing for the parties. The challenge in this petition under Article 227 of the Constitution of India is to the order dated 5th January 2007 passed by the learned trial Judge below the Application at Exh.60 filed by the 1st Respondent/Plaintiff for amendment of the plaint. Various contentions were raised by the learned Counsel appearing for the Petitioners as regards the impugned order by which the Application at Exh.60 for amendment of the plaint has been rejected. When the attention of the learned Counsel for the 1st Respondent/Plaintiff was invited to the averments made in paragraph 4 of the Application at Exh.60, he sought time to take instructions from the 1st Respondent.

2. Today after taking instructions from the 1st Respondent, he stated that though the averments in

paragraph 4 of the application Exh.60 may not be happily worded, it was never the intention of the 1st Respondent to make any allegation against any Advocate. He submitted that as paragraph 4 of the said Application is not happily worded, he may be permitted to withdraw the Application at Exh.60 with liberty to file a proper application seeking amendment to the plaint. I have heard the learned Counsel appearing for the Petitioners on the said prayer.

3. In my view the prayer made by the learned Counsel appearing for the 1st Respondent is reasonable and deserves to be granted. In view of the said prayer, the impugned order will have to be set aside with liberty to the 1st Respondent to take out fresh application. However, all contentions of the parties on merits of such fresh application will have to be kept open.

4. Hence the following order is passed:

(i) The impugned order dated 5th January 2007 passed by the learned trial Judge below Application Exh.60 is set aside.

(ii) The 1st Respondent is permitted to withdraw the Application at Exh.60 with

liberty to file a fresh application for amendment of the plaint.

(iii) All contentions of the parties on such Application for amendment, if made, are expressly kept open.

(iv) It is made clear that this Court has made no adjudication on merits of the amendment sought by the 1st Respondent in Application at Exh.60.

(v) Writ petition is disposed of accordingly.

Judge.